



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588



Teneriffe Mountain Development Co., LLC
Attn: Daniel M. Fisher and Victoria Fisher
323 Green St. Unit 1
Somersworth, NH 03878

Re: Milton, NH Tax Map 27, Lot 4

ADMINISTRATIVE ORDER
No. WD 03-10

March 13, 2003

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Teneriffe Mountain Development Company, LLC pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.

2. Teneriffe Mountain Development Company, LLC ("Teneriffe"), is a New Hampshire real estate holding & leasing corporation having a mailing address of 323 Green Street, Unit 1, Somersworth, NH 03878. Daniel M. and Victoria Fisher are members of Teneriffe.

C. STATEMENTS OF FACTS AND LAW

- 1 Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:14, III, provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
3. RSA 482-A:3, I, reads in part: "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp, in and adjacent to any waters of the state without a permit from [DES]."
4. Teneriffe is the owner of property in Milton, New Hampshire, more particularly described on Town of Milton Tax Map 27 as Lot 4 ("the Property").

- 5 On May 1, 2002, a Notice of Intent to Cut Wood or Timber ("Intent to Cut") was signed by Daniel Fisher for the Property, stating that the owner planned to log 50 acres of the 165 acre Property. The Intent to Cut serves as notice that the land is holden to taxes pursuant to RSA 79:6. May 3, 2002 was listed as the anticipated start date of the logging operation.
6. On May 10, 2002, the Intent to Cut was signed by Selectman Steven Gagne for the Property.
7. On May 20, 2002, DES received a complaint alleging wetlands impacts at the Property.
8. On May 29, 2002, DES sent a letter to Teneriffe indicating that DES had received a complaint of wetlands violations and requesting a response.
9. On June 10, 2002, DES received correspondence from Anthony Hartnett stating that he was representing Teneriffe and that Mark West, a Certified Wetland Scientist hired by Teneriffe, was preparing a proposal to address DES's concerns.
10. On June 23, 2002, DES received a phone call from State Representative Nancy Johnson stating that Teneriffe had received a Cease and Desist Order from the Town of Milton, but that work was ongoing.
11. On July 29, 2002, DES personnel inspected the Property with Mark West.
12. On August 13, 2002, DES sent a letter to Cynthia Wyatt, Milton Conservation Commission Chair, outlining the DES requests for corrective action to bring the Property into compliance that had been made to Teneriffe's agent Mark West during the site inspection. A copy was provided to Mark West. The letter requested the following:
 - a. By August 29, 2002, remove culverts on the loop road , stabilize entry and exit with seed and mulch - loam if necessary, and provide a restoration report to DES;
 - b. By September 29, 2002, identify and quantify all logging impacts, remove crossing devices and stabilize disturbed areas with a wetland seed mix and with straw and provide a restoration report to DES;
 - c. By October 29, 2002, provide a complete delineation of all wetlands on the Property and provide a restoration report to DES; and
 - d. By October 29, 2002, submit a wetlands application for impacts to wetlands.
13. On August 19, 2002, DES received a letter from Attorney Robert E. Fisher indicating that his office was representing Teneriffe and further indicating that Teneriffe did not intend to comply with the restoration requests.
14. On September 2, 2002, Mark West communicated to DES by phone that he was no longer working on behalf of Teneriffe.

15. On September 3, 2002, DES received correspondence from Anthony Hartnett entitled "Answer, Reservation of Rights, and Motion for Reconsideration". The letter indicates that:
 - a. His office was co-counsel with Robert E. Fisher;
 - b. Culverts had been replaced on the existing portions of the roadway on the Property without a permit from DES; and
 - c. The roadway had been extended and that wetland crossings were made to complete the roadway.
16. On October 31, 2002, DES personnel made a site inspection and found the following:
 - a. A logging road measuring approximately 81,000 ft. long has been widened by approximately five ft. resulting in approximately 250 sq. ft. of wetlands impacts. Five 20 ft. x 24 inch culverts had been recently installed or replaced on the existing logging road;
 - b. Approximately 20,000 sq. ft. of wetlands had been filled for a log landing measuring approximately 160 ft. x 125 ft.;
 - c. North of and adjacent to the log landing, an area of 150 sq. ft. of forested wetland was rutted;
 - d. Seven additional areas of wetlands measuring 35 sq. ft., 25 sq. ft., 260 sq. ft., 78 sq. ft., 1500 sq. ft., 600 sq. ft., and 100 sq. ft. for a total of 2,598 sq. ft. had been filled; and
17. Review of historical aerial photographs reveals the following:
 - a. Photographs taken on October 24, 1974 and July 31, 1981 do not reveal any logging roads in the location of the loop road shown on the plan submitted with the Site Specific Application; and
 - b. A photograph taken in 1998 reveals several logging roads on the Property, including the northern section of the existing loop road.

D. DETERMINATION OF VIOLATIONS

Teneriffe has violated RSA 482-A:3, I, by replacing and/or installing five culverts in jurisdictional areas without a permit from DES;

2. Teneriffe has violated RSA 482-A:3, I, by filling a total of approximately 22,600 sq. ft. of wetlands as annotated by Mary Ann Tilton in her field inspection report of October 31, 2002;

E. ORDER

Based on the above findings, DES hereby orders Teneriffe Mountain Development

Company, LLC, as follows:

- 1 **Immediately** retain a certified wetland scientist to develop a restoration plan to DES for review and approval, and to supervise the implementation of the restoration plan and submit restoration reports.
2. **Within 30 days of the date of this Order**, submit the restoration plan and include provisions for removing and restoring the recently installed wetland crossings, restoring the 20,000 square foot log landing, and restoring the seven additional areas of wetland fill totaling 2,598 sq. ft. on the Property. Submit the following with the restoration plan:
 - a. A plan with dimensions, drawn to scale, showing
 - i. Existing conditions, with wetland boundaries; and
 - ii. Proposed conditions after reestablishing the jurisdictional areas;
 - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
 - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration area and control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*);
 - d. A description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date;
 - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project.
3. Implement the restoration plan as approved and conditioned by DES.
4. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Mary Ann Tilton
DES Water Division
6 Hazen Drive
PO Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: mtilton@des.state.nh.us

F. APPEAL

Any party aggrieved by this Order may request reconsideration of these determinations within 20 days from the date of the Order pursuant to RSA 482-A:10. A motion for rehearing must describe in detail each ground for the request. DES may grant a reconsideration if in its opinion, good reason is provided in the motion.

Filing an appeal or motion for reconsideration of the Order will not automatically relieve Teneriffe of its obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Teneriffe remains obligated to comply with all applicable requirements. DES will continue to monitor Teneriffe's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Strafford County Registry of Deeds so as to run with the land.


CO COPY
Harry T. Stewart, P.E., Director
Water Division


CO COPY
Robert Monaco, Acting Commissioner

Certified Mail/RRR: 7099 3400 0003 0688 7206

cc: Gretchen Rule, Administrator, DES Legal Unit
Public Information Officer, DES Public Information Center
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ
Strafford County Registry of Deeds
Milton Selectmen
Milton Conservation Commission
File # 2002-01099